

March 26, 2004

The California Performance Review
c/o Office of Governor Arnold Schwarzenegger
State Capitol
Sacramento, California 95814

Dear Governor Schwarzenegger:

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to suggest changes under the California Performance Review to make California governmental agencies more efficient and effective and improve the state's business climate.

CSPA is a national non-profit trade association representing 240 companies that manufacture formulate, distribute and sell consumer and institutional specialty products including disinfectants, disinfectant cleaners, insect repellants pest management products and others. Our members' products are used in households and institutions around the world, and many of our members have California facilities providing thousands of jobs.

CSPA's would like to offer comments in three areas: agency funding and accountability; pesticide regulation fees, and Air Resources Board regulations and fees.

1. Agency Funding and Accountability

California's budget crisis has resulted in a disturbing change in funding regulatory activity. Traditionally California's budget has recognized the social benefit of regulatory activity and funding was provided from general revenues and subsidized by fees on industry to meet special industry-specific needs. During recent prosperous years, many new programs were added to address a variety of social concerns and agency budgets increased substantially.

The declining economy and related budget problems have resulted in a disturbing trend. Rather than reduce programs or require additional efficiencies, the Legislature has frequently reduced general funds to state agencies, but allowed them to compensate by increasing fees on regulated industries to fully offset decreases. Most of these fees are ultimately paid for in one way or another by consumers, who are often not aware of these hidden costs. In many ways this process is similar to giving an agency a blank check to cover all of its activities.

When given authority and sometimes even a mandate to increase fees to cover costs, agencies have little incentive to look for efficiencies. In fact, this hidden method of funding agencies has encouraged activists to promote additional regulatory activity that would be funded by increased fees. Examples of this trend (which will be discussed in more detail later in this memo) are the 275 percent increase in pesticide registration fees (from \$200 to \$750) and the 23 percent increase in pesticide mill tax assessment (from 17.5 mills to 21.5 mills) both of which have a substantial impact on CSPA members who make disinfectants, disinfectant

cleaners and pest management products. Another example of a fee that discourages efficiency is the California Air Resources Board (ARB) volatile organic compound (VOC) “fee” that has been implemented as a result of Assembly Bill 10x. CSPA has serious concerns that proposed the “fee” will have the perverse effect of imposing a substantial economic burden on those companies that have already paid the largest portion of the significant costs to achieve these significant emission reductions. Moreover, CSPA takes umbrage that the legislature would apply the pejorative “polluter pays” principal to tax the very companies that have done the most to achieve significant improvements to California’s air quality

CSPA urges the Administration to reverse this trend of hidden taxation by requiring agencies to justify all program activity and expenditures. Programs and activity that can no longer be justified should be eliminated, and new fees should be imposed only as a last resort. General funds should be made available to programs that benefit society as a whole and fees should only be charged when the activity is a direct benefit to the assessed industry.

The following are examples where regulatory changes would increase efficiencies, provide cost savings, improve the business climate and reduce the burden on consumers.

2. Pesticide Regulation and Fees

CSPA member companies produce a wide variety of formulated products including disinfectants, disinfecting cleaners, pest management products and insect repellants that are regulated by the USEPA and the State of California as pesticides. While California may have unique needs and concerns about agricultural pesticides, the same is not true for consumer and institutional products which are essentially the same regardless of where they are used. Therefore, these products do not require special regulatory treatment.

Consumer and institutional pesticide products must be approved by both the USEPA and the California Department of Pesticide Regulation (DPR). Manufacturers of these products must pay a \$750 pesticide registration fee on each product registered in the state as well as the mill tax (2.1%) on all sales. In fact, more than half the DPR budget comes from fees on non-agricultural products, while the vast majority of the agencies activity is overwhelmingly dedicated to agricultural programs. Unlike agricultural pesticides, consumer and institutional products are also subject to sales tax and in some cases the recently enacted Air Resources Board “fee” on VOC emissions.

California has the most extensive and costly pesticide registration requirements in the world. Many of the registration requirements were imposed by regulation or statute years ago to compensate for what was seen as deficiencies in USEPA registration requirements. Since that time, new federal laws and programs have been adopted to address those deficiencies resulting in numerous unnecessary registration duplications within the California registration process.

Specific actions DPR should take to reduce the cost and time requirements of pesticide registration include:

- Eliminate efficacy data reviews for products evaluated by USEPA
- Use USEPA evaluations of scientific data
- Establish timelines for the pesticide registration process that should be adhered to on a consistent basis resulting in predictability for registrants and predictable resource allocation for DPR
- Develop joint application reviews and work share programs with EPA for consumer and institutional products
- Adopt USEPA's scientific guidelines and standards

Cost savings from these changes should be used to lower the registration fee which is the sole source of funding for this program.

3. Pesticide Mill Tax

In addition to the registration fee, DPR imposes a mill tax on all pesticide products sold in the state. Regulations increasing that "fee" from 17.5 mills (1.75%) to 21 mills (2.1%) were promulgated as emergency rules earlier this year. Even before the increase, the mill tax raised approximately \$35 million a year, more than half of which is paid by the manufacturers of consumer and institutional products. The mill tax provides the majority of funding for all of DPR's programs which are predominantly agricultural and are not related to consumer and institutional products.

Numerous times during last year's budget debate, fee increases were justified with the logic that regulated industries should pay for the cost of regulation. Using this logic and data from a study conducted by a leading independent financial consultant, CSPA can demonstrate that prior to the increase in registration fee, the mill tax assessment on consumer and institutional products should have been approximately 10.8 mills. Now that the registration process is no longer subsidized by mill tax payments, there is an even larger discrepancy between fees collected and services provided.

While it is widely accepted that much of DPR's activity should be funded by assessments on industry, consumer and institutional product manufacturers should not be required to subsidize programs that are not related to their products. The mill tax assessment on consumer and institutional products should be reduced to reflect DPR resources dedicated to regulating them.

4. Air Resources Board Regulations

Since 1989, the ARB has promulgated five comprehensive sets of regulations that established nearly 200 VOC emission standards affecting 82 broad categories of consumer products. Many of these categories have been regulated more than once (some categories have been regulated as many as three times).

During the past 15 years, CSPA has worked cooperatively with the ARB. Together, the ARB and industry have accomplished measurable improvements in air quality while maintaining our industry's ability to supply effective products that also contribute to the health, safety, and quality of life for Californians. According to the ARB, its strict technology-forcing

consumer products regulations will achieve reduction of 130 tons of VOC emissions per day by 2005 (i.e., a 50 percent total decrease in overall emissions). This is a remarkable achievement for both the ARB and the consumer products industry which had to spend hundreds of millions of dollars to reformulate its products to meet these very aggressive regulatory standards.

As a practical matter, the ARB's impressive accomplishments have achieved virtually *all* the commercially and technologically feasible VOC reductions that may be achieved by regulating consumer products. We are now confronting the law of diminishing returns. Attaining new reductions from consumer products is increasingly difficult and expensive for both the ARB and industry to achieve. This fact is amply demonstrated by the difficulty the ARB is now experiencing in developing new regulatory standards to achieve five tons per day of new VOC reduction (i.e., CONS-1 Rulemaking). Currently, the ARB is proposing new regulatory standards for 20 categories of products. In several instances, the ARB estimates that the new standards would achieve reductions of less than 300 *pounds* per day. CSPA questions whether such reductions are even measurable in a state the size of California.

CSPA remains willing to work with the ARB to determine *if* there are any further regulatory actions that can produce significant commercially and technologically feasible and necessary emission reductions from consumer products. However, new regulations will impose a substantial cost to *both* government and industry. Substantial credible evidence supports the conclusion that these new efforts have crossed the line between meaningful (and beneficial) impact to minimal measurable effect. Given the current difficult economic climate, it makes little sense to expend a considerable amount of scarce state resources chasing increasingly small environmental benefits. Therefore, CSPA respectfully submits that the ARB should reevaluate its efforts to further regulate consumer products and shift substantial portions of the agency's resources to other efforts that will produce more meaningful emission reductions.

CSPA appreciates your consideration of our views on these important matters. We recognize the challenge you face and look forward to working with your Administration in shaping California's future.

Sincerely,



Christopher Cathcart
President

cc: Chris Reynolds, California Performance Review
Laurie E. Nelson, Randlett/Nelson Associates